

REMARKS

State of the Claims

Claims 1-6 and 9-54 are pending. Claims 2-4 have been canceled without prejudice and withdrawn them from further consideration. The subject matter of now-canceled Claims 2-4 has been added to amended Claim 1. Claims 1, 5-6 and 9-15 remain and stand rejected.

35 U.S.C. § 102(b) Rejection

Claims 1, 4-6 and 9-15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Stover (U.S. Patent No. 4,579,048). Claim 4 has been canceled without prejudice and the subject matter therefore incorporated into amended Claim 1. Claims 1, 5-6 and 9-15 are pending. No new matter has been added.

The Examiner states that Stover '048 discloses a system for preparing a customized brewed coffee beverage comprising structure allowing for delaying dilution of an extract for a time--e.g., 8 minutes.

According to MPEP § 2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. The elements must be arranged as required by the claim.

Applicants have amended Claim 1 to include the subject matter of now-canceled Claims 2-4. For instance, in delayed dilution, mixing and/or filtering, such delay may occur between about 5 minutes and about 30 minutes from the onset of brewing. Support for the amendments can be found on page 10, lines 12-16 of Applicants' specification.

Stover '048 does not teach a delay in dilution beyond the eight minutes noted therein.¹ Therefore, Applicants' range, which exceeds Stover's eight minute delay is novel. Also, Stover '048 cannot hold his tea for as long as Applicants can hold their coffee extract, namely up to 48 hours. The Examiner has not asserted that Stover '048 has this capability, and Applicants respectfully assert that Stover '048 does not teach this element.

Applicants therefore respectfully assert that Stover '048 is missing several key elements outlined above and request reconsideration and allowance of Claims 1, 5-6 and 9-15 over the Examiner's 35 U.S.C. § 102(b) rejection.

¹ U.S. Patent No. 4,579,048 (Stover), col. 9, lines 15-20.

Claims 1-3 and 9-15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Adler (U.S. Patent No. 2,949,993). Claims 2 and 3 have been canceled without prejudice. Claims 1 and 9-15 are pending.

Applicants have amended Claim 1 to include the subject matter of now-canceled Claim 4, namely, that a maximum period to initiate delayed dilution, mixing and/or filtering is forty-eight hours.

This element is not taught by Adler '993. Therefore, Applicants respectfully assert that their claims are now allowable over Adler '993 and request that the Examiner reconsider Claims 1 and 9-15 over the 35 U.S.C. § 102(b) rejection.

35 U.S.C. § 103 Rejection

Claims 1-3 and 9-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Adler '993. Claims 2 and 3 have been canceled without prejudice. No new matter has been added. Claims 1 and 9-15 are now pending.

Applicants have amended Claim 1 to include the subject matter of now-canceled Claim 4, namely, that a maximum period to initiate delayed dilution, mixing and/or filtering is forty-eight hours.

This element is not taught or suggested by Adler '993 and the reference provides no motivation to one of skill in the art to modify Adler '993 to produce Applicants' claimed invention. Therefore, Applicants respectfully assert that their claims are now allowable over Adler '993 and request that the Examiner reconsider Claims 1 and 9-15 over the 35 U.S.C. § 103(a) rejection.

Claims 2 and 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stover '048.

Claims 2 and 3 have been canceled without prejudice and are no longer pending. Therefore, Applicants believe that this rejection should be rescinded.

SUMMARY

The rejections in the Office Action have been discussed and, Applicants believe, the proper arguments have been set forth to address the rejections.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

ROGER WILLIAM GUTWEIN, ET AL.

By: 

Theodore P. Cummings, Esq.
Attorney for Applicants
Registration No. 40,973
(513) 634-1906

March 10, 2004

Customer Number 27752